

## INSTRUCTIONS—FORM 1045-K

(Section references are to the 1997 Internal Revenue Code unless otherwise specified.)

**PURPOSE OF FORM**—Form 1045-K is to be used by an individual, estate or trust to claim a refund of income taxes resulting from a carryback of a net operating loss or an unused unemployment tax credit.

**NOTE:** *You may elect to carry forward a net operating loss instead of first carrying it back by attaching a statement to a timely filed (including extensions) return for the year of the loss.*

The election should state that it is being made under the applicable provisions of Section 172 of the Internal Revenue Code. Once the election is made, it is irrevocable for that tax year. The carry forward is limited to 15 years.

**WHERE TO FILE**—File this form with the Kentucky Revenue Cabinet, Frankfort, Kentucky 40618-0006. Do not mail Form 1045-K with your income tax return.

**WHEN TO FILE**—File within four years of the due date of the return including extensions for the year in which the net operating loss or unused credit occurred, but only after you have filed the return for that year.

**NOTE:** *Do not use this form and instructions for claiming net operating losses or unused tax credits for taxable years prior to 1996.*

**WHAT TO ATTACH**—Attach copies of the following, if applicable, to Form 1045-K **for the year of the loss or credit**:

- Pages 1 and 2 of Form 740 and Schedule A.
- Pages 1 and 2 of federal Form 1040 and Schedule D.
- The Schedules K-1 received from any partnership, S corporation, estate or trust which contribute to the loss or credit carryback.
- A copy of the application of extension of time to file your income tax return.
- Any form or schedule from which the carryback loss results (such as federal Schedule C, F or Schedule UTC).
- A copy of federal Form 1045.

All applicable information described above must be attached to your application and all questions on page 1 must be answered or your refund will be delayed.

**ALLOWANCE OF REFUND CLAIM**—A claim for refund or credit resulting from a net operating loss occurring in a taxable year beginning after December 31, 1993, must be filed within four years from the due date of the return or the date the tax was paid including extensions, whichever is later, for the year of the loss. The Cabinet must follow the provisions of KRS 141.210 and 141.235 with respect to the time limitations for assessments and refunds of the tax. Denials of refunds claimed or adjustments to refund claims by the Cabinet must be protested in writing within 45 days pursuant to KRS 131.110.

### LINE-BY-LINE INSTRUCTIONS

Enter in columns (a), (c) and (e) the amounts for the applicable carryback year as shown on your original or amended return. If the return was examined, enter the amounts determined as a result of the examination.

**Line 1(a), Net operating loss carryback**—Figure the net operating loss carryback on Schedule A (Form 1045-K).

Carry a net operating loss back to the third tax year before the loss. Any loss not used in the third year is carried to the second, and then the first preceding years. Carry over a loss not applied in the three preceding years up to 15 years. Special rules apply for any part of a net operating loss related to a foreign

expropriation loss, a product liability loss and certain other losses. See Section 172(b) of the Internal Revenue Code and related regulations.

If you filed a joint return for some, but not all of the tax years involved in the carryback, see Section 1.172-7 of the federal income tax regulations before applying the carryback.

**Line 1(b), Carryback of unused unemployment tax credit**—To claim a refund based on the carryback of this credit, attach a detailed computation showing how the credit carryback was figured, and a recomputation of the credit after applying the carryback. See instructions for Schedule UTC.

**Line 6, Income from tax return**—Enter in columns (a), (c) and (e) the income from Form 740, Line 14, columns A and/or B (Form 740-NP, Line 28) for 1994, 1995 or 1996.

**Line 7, Computation of net operating loss when it is not fully absorbed in preceding tax years**—The amount of a net operating loss that may be carried to the next year, after applying it to an earlier year or years, is the excess, if any, of the net operating loss carryback over the taxable income of those earlier years, computed with the following modifications:

- (1) The excess of capital losses over capital gains is not allowed.
- (2) Determine taxable income for the earlier tax year(s) without taking into account the net operating loss carryback from the loss year or any later tax year. Net operating losses, otherwise allowable as carrybacks or carryovers, occurring in tax years before the loss year, are taken into account in computing the taxable income for the earlier tax year.
- (3) Any deductions claimed, except charitable contributions, that are based on or limited to a percentage of income (such as medical expenses and miscellaneous itemized deductions) must be recomputed on the basis of the income after applying adjustments (1) and (2) above. Determine the deduction for charitable contributions using the same adjustments except do not take into account any net operating losses carried back.

The taxable income as modified is to be considered not less than zero.

Computation of the amounts to be carried to the next year must be attached.

**Line 9, Itemized/standard deduction**—Enter in columns (a), (c) and (e) the itemized deductions or standard deduction (\$650) claimed on Form 740 or 740-NP. Enter in columns (b), (d) and (f) the recomputed itemized deductions or the standard deduction after the carryback (see line 7 instructions above).

**Line 11, Income tax**—For columns (b), (d) and (f) recompute the tax after taking the net operating loss carryback into account. Attach a detailed computation. The tax form and instructions for the applicable year will help make this computation. Include on this line any tax from Form 4972-K, Kentucky Tax on Lump-Sum Distributions.

**Computation of tax when the net operating loss is fully absorbed in the earliest preceding tax year**—In recomputing the tax for the year to which the net operating loss is carried and fully absorbed, determine the deduction for charitable contributions without regard to any net operating loss carryback. Any other deductions claimed, based on or limited to a percentage of income (such as medical expenses) must be recomputed on the basis of income, determined after applying the net operating loss carryback.